

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID CLARK *et al.*,

Plaintiffs,

v.

DUKE UNIVERSITY *et al.*,

Defendants.

No. 16-1044-CCE-LPA

**PLAINTIFFS' MOTION TO SEAL EXPERT REPORTS DESIGNATED AS
CONFIDENTIAL**

In accordance with Local Rule 5.4, Plaintiffs move to seal exhibits filed in support of their Opposition to Defendants' Motion to Strike Rebuttal Reports of Plaintiffs' Experts Wendy Dominguez and Ty Minnich and Exclude Their Testimony at Trial. Doc. 115. Two exhibits are the unredacted Responsive Expert Reports of Defendants' experts Russell R. Wermers and Conrad Ciccotello dated August 21, 2018. The other two are excerpts from the depositions of Wermers and Ciccotello.

Defendants designated their experts' reports as confidential in their entirety in accordance with the protective order entered in this case. Plaintiffs conferred with Defendants regarding their confidential designations and whether the reports should be filed under seal. They requested that deposition testimony of TIAA witnesses, documents marked confidential and produced by third parties, and the following sections of the responsive report of Conrad Ciccotello (§§ 114, 120–122, 143, 148, 159; Table 6; and Exhibit 8) be redacted and filed under seal. Redacted versions of the responsive reports

were attached to Plaintiffs' Opposition to Defendants' Motion to Strike.

Under the terms of the protective order, Defendants have up to 30 days from receipt of the final transcript to designate any portions as confidential. Doc. 56 ¶8. The time for Defendants to make these designations has not expired. As a result, Plaintiffs are provisionally filing these transcripts under seal to provide Defendants an opportunity to make any confidential designations, if necessary.

Defendants' August 21, 2018 responsive expert reports and related deposition transcripts are relevant to the Court's consideration of Defendants' Motion to Strike. The reports reflect the expert opinions that Plaintiffs' experts Dominguez and Minnich were retained to rebut. This Court should consider Defendants' responsive reports when deciding Defendants' Motion to Strike.

Plaintiffs do not agree that Defendants' responsive reports contain confidential information as defined under the terms of the protective order or otherwise reflect information that should remain sealed from public view. Doc. 56 ¶3; Fed. R. Civ. P. 26(c). Because Defendants are asserting confidentiality over portions of their two responsive expert reports, they have 14 days to file a brief providing all the information required under Local Rule 5.4(b). Plaintiffs also will provide notice of their Motion to Seal to the third parties whose documents or deposition testimony have been requested by Defendants to be sealed.

October 22, 2018

Respectfully submitted,

/s/ Michael A. Wolff
SCHLICHTER BOGARD & DENTON LLP
Jerome J. Schlichter, MO No. 32225*
Michael A. Wolff, MO No. 38207*
Kurt C. Struckhoff, MO No. 61873*
100 South Fourth Street, Suite 1200
St. Louis, Missouri 63102
(314) 621-6115, (314) 621-5934 (fax)
jschlichter@uselaws.com
mwolff@uselaws.com
kstruckhoff@uselaws.com
*appearing by *special appearance*

Lead Counsel for all Plaintiffs

/s/ David B. Puryear, Jr.
David B. Puryear, Jr.
North Carolina State Bar No. 11063
PURYEAR & LINGLE, PLLC
5501-E Adams Farm Lane
Greensboro, NC 27407
(336) 218-0227
puryear@puryearandingle.com

Local Counsel for all Plaintiffs

CERTIFICATE OF SERVICE

I certify that on October 22, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send notification of filing to all counsel of record.

/s/ Michael A. Wolff